IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 173 of 2005
With
CIVIL APPLICATION No. 7591 of 2005
In SECOND APPEAL No. 173 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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INDU NISSAN OXOCHEMICAL INDUSTRIES LTD - Appellant(s)
Versus
INDO NIPPON CHEMICAL CO. LTD. - Defendant(s)

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Appearance :
MR NILESH A PANDYA for Appellant(s) : 1,
M/S THAKKAR ASSOC. for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/04/2006

ORAL JUDGMENT

1.Indu Nissan Oxo Chemical Industries Ltd., appellant-

original plaintiff has filed this appeal under Section 100 of CPC on 30/12/2004 challenging the judgment and decree dated 29/10/2004 passed by the Second Joint District Judge, Vadodara in Regular Civil Appeal No.34 of 2004. The learned Judge by impugned judgment and order, pleased to reject the appeal on merits of the matter and confirm the order passed below Exh.31 on 12/3/2004 passed by the Joint Civil Judge (J.D.) in Regular Civil Suit No.762 of 2000.

2. It may be noted that the learned Trial Judge by his impugned order rejected the application of the plaintiff, below Exh.47 and also rejected the claim application of the plaintiff filed under Order 7 Rule 11(B) of CPC and the learned Trial Judge has allowed the application of the defendant, below Exh.31.

3. The facts giving rise to this appeal are as under:

3.1) There is a land situated at Haribhakti Colony, Race Course Circle, Vadodara bearing Revenue Survey No.78/1 Paiki, admeasuring 23500 sq.fts. It is open land which is considered to be a suit land. The suit land was purchased by the defendant from the land owner by registered sale deed somewhere on 31/3/1982. The

plaintiff has invited my attention to the sale deed in this behalf.

3.2) Indu Nissan Oxo Chemical Industries Ltd, original plaintiff has filed Civil Suit No.762 of 2000 before the Court of Civil Judge (S.D.), Vadodara with a prayer that the Court may declare that the defendant holds the said plot of land at Haribhakti Colony, Jetalpur Road, Vadodara bearing Revenue Survey No.78 paiki, admeasuring 23500 sq. fts. For, on behalf of and for the benefit of the plaintiff and the defendant may ordered and decreed to convey and transfer the said plot to the plaintiff. Said suit was filed on 5/5/2000. Initially the Court has granted status quo in this behalf. The defendant has filed written statement in the said suit at Exh.10 on 19/5/2000.

3.3) The learned Trial Judge by his judgment and order dated 31/8/2000 held that the plaintiff has to declare market value of the land and pay the Court fees within 15 days. However, Exh.5 application has been rejected by the Trail Court.

3.4) Being aggrieved and dissatisfied with the same, the plaintiff has filed application for suspension of

orders for filing appeal under Order 43 at Exh.26. The said application was rejected. However, the plaintiff filed application for extension of time for payment of court fees on 16/9/2000 at Exh.27 which was granted by the Trial Court. Again the plaintiff sought time for payment of court fees on 6/10/2000. Meanwhile, the defendant filed application for rejecting the application of the plaintiff on 2/9/2000 at Exh.31. The plaintiff has filed reply to the said application on 15/9/2000 at Exh.33. The plaintiff has also filed written statement at Exh.36 on 29/9/2003 to the application at Exh.31. Written statement was also filed by the defendant on 13/10/2003 at Exh.40.

3.5) The learned Trial Judge by his judgment and order dated 20/10/2003 pleased to pass an order that there is no need to pass order below Exh.31 till the appeal is decided in this behalf.

3.6) Being aggrieved and dissatisfied with the same, the defendant has filed Civil Revision Application No.371 of 2003 before this Court challenging the order below Exh.31. This Court (Coram:P.B.Majmudar, J.) in the Civil Revision Application No.371 of 2003 by his judgment and order dated 20/2/2004 pleased to allow the

application and held that the Trial Court shall proceed with the application Exh.31 on its own merits and decide the same within the stipulated time. Thereafter the plaintiff again filed application on 5/3/2004 pursuant to the directions given by the High Court at Exh.47.

3.7) The learned Trial Judge by his judgment and order dated 12/3/2004, pleased to allow the application at Exh.31 and rejected the application at Exh.47 for payment of court fees.

3.8) Being aggrieved and dissatisfied with the said judgment and order, the plaintiff file Regular Civil Appeal No.34 of 2004 under Section 96 of CPC which has been rejected by the judgment and order dated 29/10/2004. Hence, present appeal is filed.

4. I have considered the facts and circumstances of the case in this behalf. I have heard Mr.N.A.Pandya, learned advocate for the appellant. He has stated that in this case merely amount of court fees has not been brought. The plaintiff is prepared to pay the court fees. The plaintiff and defendant are closely related and though decree is passed, there is no final

adjudication in this behalf and only technically the appeal is dismissed. If this Court grants time, the plaintiff is prepared to pay the court fees.

5.I have considered various facts and circumstances of the case and I have set out all these facts in my order. It is no doubt true that appeal is filed only on the ground of non payment of court fees so if the court fees can be paid, the appeal can be heard on merits. In view of the same, I quash and set aside the judgment and decree of the learned Appellate Judge dated 29/10/2004 in this behalf and also judgment and decree of the learned Trial Judge dated 12/3/2004 in this behalf. I direct the learned Trial Court that if the plaintiff filed application for payment of court fees, the Trial Court will grant the time. The order of the learned Trial Court allowing Exh.31 application filed by the defendant is also quashed and set aside and the Appellate Court is directed to give chance to the plaintiff and hear the matter on merits.

6.Second Appeal is allowed only on the facts and circumstances of the case. It may be treated as precedent in this behalf.

(K.M.MEHTA, J.)

(ila)

As Second Appeal is disposed of on the ground that proper Court fee is not paid. No order on CA at this stage.

(K.M.MEHTA, J.)

CA also disposed of.

(K.M.MEHTA, J.)